BEFORE THE
UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON D.C.

STEEL

(INVESTIGATION NO. TA-201-73)

PREHEARING SUBMISSION ON REMEDY
OF THE
EUROPEAN COMMISSION

29 October 2001

1. Introduction

This pre-hearing submission is filed on behalf of the Commission of the European Communities ("European Commission").

The European Commission is very concerned by the possible application of safeguard measures to imports of certain steel products ("steel") into the United States.

In this respect, the European Commission notes with disappointment that none of the arguments it made during the injury phase of this case appear to have been taken into account in the ITC's final decision on injury. As it stands, the European Commission has serious concerns with the WTO-compatibility of these proceedings and reserves all its rights in this regard.

2. Like or directly competitive product and domestic industry

The European Commission is particularly concerned by the fact that interested parties have not been able to defend their essential rights in this case, in particular because the domestic like product and, therefore, the corresponding domestic industries, have not been clearly defined, even by the ITC in its final injury determination.

In fact, the European Commission notes that the ITC has released its injury determinations without a detailed report in support of its conclusions. The six Commissioner's individual determinations vary widely as to how individual products are grouped into like products for the purpose of identifying the (allegedly injured) domestic industry or industries. This lack of clarification has a number of consequences:

- Firstly, all parties in the injury investigation faced great difficulties to properly defend themselves. Normally, the scope of any safeguard investigation is determined by the imports which are covered in the notice of initiation. Determining the overall scope of an investigation is not sufficient, however, as it does not necessarily define separately the products that are like or directly competitive to those which are covered by the notice of initiation. The necessity of early identification of these like or competitive products derives from the requirement that injury must be determined for the producers of the like or directly competitive products. In other words, the whole of the injury phase of these investigations should be focused on establishing whether there is serious injury being caused to US domestic producers of like or competitive products. However, in this case the injury phase was initiated and carried out without clarification on this issue. It was concluded with all parties concerned still not certain of what the ITC considered were the like or competitive products covered by this case.

- All this is particularly important given the way injury has to be established in these cases. Serious injury can only be deemed to exist when the investigation shows that an unforeseen emergency situation has developed as a result of a sudden, recent and sharp rise in imports. Unless clarity exists on what constitutes the like or competitive product which in turn identifies the domestic industry concerned, it would appear impossible to check whether serious injury conditions indeed exist for none, some, or all the 33 products. Even if the ITC

eventually provided some clarity in this regard it will be too late for parties to make a meaningful input into the whole process.

- Moreover, this lack of clarity on like product makes it difficult, if not impossible, to have a meaningful discussion on remedy, since such discussion should centre on the proper level of remedy necessary to remove injury for each like and competitive product. This is particularly true since the remedy can range from tariff measures to quantitative restrictions to other types of measures.

2. Reference period used to establish injury

The Community is very pre-occupied with the precise methodology on how serious injury has been established, in particular with regard to any reference period used, given that imports into the US for most of the products concerned have fallen sharply over the years.

3. Double protection

The United States has a long track record of AD and CVD measures against steel imports. These measures cover many of the products included in the current safeguard investigation. Although certain cases are somewhat old, a number of these measures have been imposed during the last three years. In addition, some new AD and CVD investigations were initiated after this safeguard proceeding on the same products (wire rod, cold-rolled steel).

The European Commission submits that, for those steel products already covered by AD and CVD measures, the possible imposition of new restrictions under the safeguard agreement would mean an extra and inappropriate layer of protection.

In fact, to the extent that the injury is already remedied by existing AD and CVD measures, no safeguard action should be taken or, at least, the ITC in its final determination on remedy should carefully take into consideration the compounded impact of all measures.

4. NAFTA countries

The European Commission notes that the ITC made a separate determination on injury for Canada and Mexico. This may eventually lead to a remedy determination that excludes one or both of these countries from the imposition of measures on a number of products.

This result would not be acceptable, as it cannot be distinguished which part of the alleged serious injury may have been caused by imports originating in a particular country.

5. Conclusions

In conclusion the European Commission wishes to underline its belief that it is inappropriate to discuss remedies in this case without adequate clarification on the products and industries which have been found to have been seriously injured. Moreover, proper information on the way such injury has been established must be released to all interested parties.

It is the Commission's view is that serious injury has to be established for domestic production of like or competitive products in these safeguard investigations. From the information so far released by the ITC on its injury conclusions there is considerable uncertainty about whether this has been done.

The Community is very pre-occupied with the precise methodology on how serious injury has been established given that Community exports for most of the products concerned have fallen sharply over the years. The same appears to apply for all US imports of steel. It is therefore of considerable importance for the Community to obtain information on the product groupings used to establish injury as the constitution of the groupings will determine the statistics which must be used to determine injury. Information on this would appear to be the minimum necessary to ensure the rights of defence for all parties concerned.